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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections	)	MM Docket No. 92-266
of the Cable Television	)	
Consumer Protection and	)	
Competition Act of 1992:	)	CS Docket No. 96-60
Rate Regulation	)	
	)	
Leased Commercial Access	)	

To: The Commission

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JOINT COMMENTS OF INTERMEDIA PARTNERS

AND ARMSTRONG UTILITIES, INC.

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Dated: May 15, 1996

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To: The Commission

JOINT COMMENTS OF INTERMEDIA PARTNERS AND ARMSTRONG UTILITIES, INC.

I. INTRODUCTION

InterMedia Partners ("InterMedia") and Armstrong Utilities, Inc., dba Armstrong Cable Services ("Armstrong"), hereby submit joint comments in the above-captioned proceeding.[1] InterMedia operates cable systems primarily in the Southeastern region of the country, including Tennessee, North Carolina, South Carolina, and Georgia. InterMedia serves approximately 750,000 subscribers. Armstrong is a closely-held, family-owned business that has operated cable television systems since 1960. Currently, Armstrong serves approximately 192,000 subscribers in 209 cable television franchise areas located in Pennsylvania, Ohio, West Virginia, Maryland, and Kentucky. Armstrong's cable subscribers receive between 36 and 42 channels of programming

[1] See Order on Reconsideration of the First Report and Order and Further Notice of Proposed Rulemaking ("Reconsideration Order" or "FNPRM"), MM Docket No. 92-266 and MM Docket No. CS 96-60, FCC 96-122, released March 29, 1996.

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delivered via state-of-the-art technology which, for the most part, Armstrong has internally financed, constructed, and continually upgraded over a period of thirty years.

II. SUMMARY OF DISCUSSION

InterMedia and Armstrong believe that the Commission is making a fundamental error in the leased access FNPRM by focusing exclusively on leased access rates as the sole means by which to increase diversity in programming. The current lack of program diversity on leased access channels is not solely or even primarily due to the Commission's perception of high leased access rates. Rather, the Commission's policies discourage such diversity by, for example, forbidding cable operators to request any information from a programmer during initial negotiations. See Reconsideration Order at ¶ 39. Wholly without merit, the Commission's review of leased access policies place leased access in a vacuum which ignores the present day market and regulatory realities and one which frustrates the goals and mandates of the Communications Act of 1934, as amended ("Communications Act"), which are to promote diversity of programming as well as the growth and development of cable systems. See 47 U.S.C. § 532(a).

The proposed "cost/market rate" formula, which will not enhance diversity, also does not allow for recovery of the reasonable costs associated with leased access, such as the loss in the value of a programming tier caused by the removal of popular cable programming and the addition of leased access programming which does not necessarily reflect the customer's needs and interest in contravention of the major goals and mandates of the Communications Act. See 47 U.S.C. § 532(a) and (c)(1).

The Commission compounds its mistake by proposing to eliminate programming categories. The Commission justifies its proposal by concluding that leased access programmers should not be charged different rates based upon the content of their programming. By focusing on this issue only in the context of rates, the Commission is overlooking a real opportunity to improve programming diversity, not to mention provisions in the Communications Act which specifically provide for different rates based upon the content of programming. See 47 U.S.C. § 532(c)(2). See also House Committee on Energy and Commerce, H.R. Rep. No. 98-934, 98th Cong., 2d Sess. (1984) ("House Report") at 51.

Rather than eliminating categories, instead the Commission should increase the number of categories and give to cable operators the minimal discretion needed to allocate leased access channels among those categories. This would give to cable operators the flexibility to truly offer their customers a wide range of programming. Such action would promote both program diversity and the market development of cable systems. And, as discussed in further detail below, such flexibility already has been approved of by Congress. Finally, many of the rules which the Commission proposes to adopt have no statutory basis and/or expose cable operators to unwarranted risk vis-a-vis competitors and cable programmers.

III. PERTINENT HISTORY CONCERNING LEASED ACCESS REQUIREMENTS

The leased access requirements presently under review by the Commission were established by the Cable Communications Policy Act of 1984 ("1984 Act") and revised by the Cable Consumer Protection and Competition Act of 1992 ("1992 Act"). Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984); Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

The original goals of leased access are effectively the same as those which the Commission is charged with fulfilling today:

> The purpose of this section is to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with the growth and development of cable systems. 47 U.S.C. § 532(a).

While noting that the overriding goal of leased access is to promote diversity, Congress expressed concern in 1984 that such a goal not be achieved at the expense of the economic viability of cable systems. House Report at 50. Congress also took note of the possibility that mandating rates which are too low could result in leased access programmers "unfairly" draining away subscribers and revenue from cable operators. Id. As discussed below, what was a possibility in 1984 has become a reality in 1996 due to the Commission's current and proposed regulations that stifle diversity and the economic growth of cable operators.

Nonetheless, Congress attempted in 1984 to prevent this result by expressly stating that cable operators could discriminate in determining rates, terms, and conditions for leased access. See House Report at 51. See also 47 U.S.C. § 532(c)(2). Such discrimination is necessary, Congress opined, because otherwise a cable operator would have to provide access to all programmers at the same average price, which inevitably, and unfairly, would be too low for some programmers and too high for others. See House Report at 51.

Congress also expressly stated that:

> [N]othing in these provisions is intended to impose a requirement on a cable operator that he make available on a non-discriminatory basis, channel capacity set aside for commercial use by unaffiliated persons. Nondiscriminatory access requirements could well undermine diversity goals... Id.

Further, Congress reminded the Commission not to see its role in leased access as that of a traditional common carrier regulator. See House Report at 54. Finally, and most importantly, Congress emphasized that it is entirely appropriate for a cable operator to take into account (i) the nature of the leased access service being proposed, (ii) how it will affect the marketing mix of existing services being offered, (iii) potential market impact, and, (iv) any effect that the leased access programming might have on subscriber or advertising revenues. Id.

Through the 1992 Act, Congress revised the leased access provisions of the Communications Act to, among other things, give to the Commission the responsibility for establishing maximum reasonable rates, terms, and conditions for leased access. See 47 U.S.C. § 532(c)(4). In doing so, however, Congress did not in any way amend the conclusions it reached in 1984 concerning the need to achieve diversity while also protecting the economic viability of cable systems, and the ability of cable operators to look at a variety of factors when negotiating with leased access programmers.

Unfortunately, the Commission in its FNPRM has overlooked the principles discussed above and instead proposes to put in place a rate scheme that adversely affects the economic well-being of cable operators and which undermines diversity goals by failing to take into account the realities of a multimedia marketplace and cable industry which has changed significantly since 1984.

The regulatory environment of cable systems has changed dramatically since the adoption of the original leased access requirements in 1984. Cable operators are now subject to must-carry provisions, in addition to leased access and public, educational and governmental ("PEG") requirements.[2] Under the Commission's must-carry provisions, cable systems with more than 36 activated channels are required to carry at least three noncommercial educational stations, and cable systems with more than 12 activated channels are required to dedicate up to one

[2] A local franchising authority may require, as part of a local cable franchise, or as part of the cable operator's proposal for a franchise renewal, that channel capacity be designated for PEG use. Many franchise authorities do, in fact, mandate PEG access channels. See, 47 U.S.C. §531(b).

third of its activated channels to local commercial television stations. See, 47 C.F.R. § 76.56.

Leased access, must carry and PEG requirements must be viewed in their totality, to understand the real impact on cable systems. For example, for InterMedia's small cable system in Gallatin, TN, which has 38 activated channels, 20 of the 38 channels are required to be dedicated to must-carry and leased access.[3] This does not even include any additional PEG requirements.

The competitive environment has also changed since 1984. With elimination of the cable teleco cross ownership rules and the passage of the new Telecommunications Act of 1996, Pub. L. No. 104-104, 100 Stat. 56 (1996) ("1996 Act"), cable is now or will soon be subject to competition from local exchange carriers, DBS, open video systems ("OVS"), wireless service providers, and utility companies. DBS is now available in every state except Hawaii.[4] The number of subscribers to DBS has more than doubled since the end of 1994, increasing from a little over 600,000 subscribers to 1.7 million subscribers. Id. Some analysts are predicting DBS to serve 3 million subscribers by the end of 1996

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[3] In other parts of Tennessee, InterMedia had over 1,000 subscribers disconnect when InterMedia was forced to replace WGN with a local television station WNAB-TV, Nashville, TN. Attached hereto as Exhibit One are examples of letters from subscribers disconnecting their service.

[4] Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, ("Second Annual Report") CS-Docket No. 95-61, FCC 95-491, released December 11, 1995 at ¶ 9.

and 6 million subscribers by 1999. Id. at ¶ 50. Wireless cable systems experienced a 33% growth rate since the end of 1994, and combined with SMATV systems serve up to 1.75 million subscribers. Id. None of these service providers, with the exception of OVS, are subject to leased access or must-carry provisions.[5]

The FCC must take these regulatory and competitive developments into account when implementing its leased-access rate proposals. In seeking to promote greater use of leased access channels the Commission should not lose sight of the Congressional mandate not to thwart economic growth and development of cable systems. House Report at 48. While viewed in a vacuum, leased access provisions appear to affect only a small percentage of cable operator's available channels. This is not the case when the total aggregate of all federally and locally mandated channel quotas is considered.

IV. DISCUSSION

A. THE COMMISSION SHOULD RETAIN AND EXPAND PROGRAMMER CATEGORIES TO ENCOURAGE DIVERSITY OF PROGRAMMING.

Traditionally, cable operators routinely ascertain the needs and interests of subscriber through market studies, focus groups and customer surveys in order to ensure a diversity of programming reflective of the community's needs and interests. Following such ascertainment, cable operators enter into arms length negotiations to obtain the best product at the best price for their customers. In contrast, the leased access policy

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[5] Section 653(c)(1)(B) of the 1996 Act provides that PEG and must-carry obligations apply to OVS operators.

provide a "back door" which circumvents this process of providing diversity by allowing any programmer to side-step such negotiations and obtain virtually free access to the cable system. As a result, popular programming will be dropped and the goal of diversity is compromised.

The Commission proposes to eliminate programmer categories under the proposed cost formula because it does not believe that programmers should be charged different rates based upon the content of their programming. See FNPRM at ¶ 74. By linking these categories solely to rate issues, the Commission is overlooking the opportunity to increase program diversity. InterMedia and Armstrong believe that some of the existing categories should be retained and new ones created to promote the statutory goals of diversity and market development. In addition, cable operators should be allowed to allocate a certain percentage of leased access channel capacity to various programming categories. Specifically, InterMedia and Armstrong believe that the pay-per-view/pay-per-channel, home shopping and "other" categories[6] set forth in 47 C.F.R. § 76.970(f) should be

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[6] InterMedia and Armstrong believe it is necessary to retain the "other" category that currently exists to accommodate programming such as advertising-supported entertainment shows. For purposes of allocation, infomercials and programs that showcase local real estate for sale should be placed in the home-shopping category.

retained and that new categories for educational, minority, and not-for-profit programming should be created.[7]

Cable operators also should be allowed to set aside a certain percentage of leased access channels to specific categories. This set-aside should be flexible enough to permit operators to respond to the changing needs of subscribers as evidenced by for example, subscriber ascertainment studies, and should be able to consider the types of programming service already available to them already on the cable system.

To accomplish this balancing act, cable operators should be able to look to the "totality of programming" offered on their systems in making this determination. For example, if a cable operator currently carries educational programming, whether it be a cable programmer or broadcast station, and an educational leased access programmer requests access, a cable operator should be allowed to avoid duplicative educational leased access programming in same manner as cable operators are not required to carry duplicative must-carry signals.[8] Such flexibility will

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[7] Both the Communications Act and the Commission's rules provide that minority and educational programming may, to some extent, be cablecast in lieu of leased access programming. See 47 U.S.C. § 532(i) and 47 C.F.R. § 76.977. InterMedia and Armstrong's suggestions do not duplicate this existing treatment, but rather provides for an additional means by which such programmers could gain access to cable systems.

[8] In many cases, the leased access requirement of a 10% set-aside for cable systems with up to 54 channels results in approximately four channels in a system being set aside for leased access. If the Commission adopts more than four programming categories for leased access, as InterMedia and Armstrong suggest, not all categories of programming will be represented on a cable system at any given time. The point,

further enhance program diversity and market development by permitting cable operators to arrange a complement of leased access channels that best meet the needs of the subscribers they serve. Consistent with the Cable Act's renewal provisions, ultimately the cable operator is responsible for the quality of service. 47 U.S.C. 546(c)(1)(B).

Programming categories and the ability to allocate among them is encouraged by the legislative history of the 1984 Act, which reflects congressional approval of the ability of cable operators to look to the nature of the leased access service being proposed in determining not only rates, but also in determining what effect the proposed programming will have on the mix of services currently offered on cable systems. See House Report at 51.

In clarifying existing leased access rules and in proposing new ones, the Commission relies too much upon a congressional statement inferring an intent to divorce cable operators from editorial control over leased access channels. This preoccupation, combined with a narrow focus on rates as the answer to all diversity woes, prevents the Commission from seeing the true effect of its proposed rules: programming diversity will not increase because no one is being given the practical tools needed to see that it does. Programming categories and set-aside

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however, is not to ensure carriage on cable systems for each and every category, but rather to enhance diversity by giving operators the discretion to use the categories as guides to determine which type of leased access programming will best serve subscribers.

flexibility, on the other hand, give to cable operators the minimal discretion they need to ensure that the goal of diversity is achieved.

B. NOT-FOR-PROFIT LEASED ACCESS PROGRAMMERS DO NOT NEED RATE DISCOUNTS BUT A PROGRAMMING CATEGORY SHOULD BE CREATED FOR THEIR USE IN ORDER TO ENHANCE DIVERSITY.

There is no need to provide leased access rate discounts to not-for-profit programmers, for they already have available to them a wide variety of funding sources. In addition to traditional sources of funding, such as grants for the arts, a new and very valuable source recently was created by the 1996 Act . See §§ 707 and 714.

Under the 1996 Act, the Commission will put deposits from spectrum auctions into interest-bearing accounts. The accrued interest will be made available to small businesses looking for low-interest loans. The earned interest is estimated to be as high as $60 million, all of which will be available to small companies such as most not-for-profit leased access programmers.

These funding sources confirm that not-for-profit programmers should not be given special treatment at the expense of cable operators, who already are forced to charge excessively low rates for leased access. Any discounts offered to not-for-profit programmers would deny cable operators the ability to recover legitimate leased access costs and would be in violation of the Communications Act, which mandates that cable operators not suffer financial harm in fulfilling their statutory responsibilities. See 47 U.S.C. § 532(c)(1).

Although not-for-profit programmers have virtually free access through public, educational, and governmental channels available in many communities throughout the country, InterMedia and Armstrong support the creation of a programming category for not-for-profit programmers. Such programmers are capable of offering distinctive programming which may not always meet the literal definitions of either educational or minority programming. Nonetheless, what these programmers do offer can contribute much to increasing the diversity of viewpoints provided through cable service.

With regard to for-profit programmers, InterMedia and Armstrong do not believe that any such programmer can make a plausible argument for special treatment under the leased access rate rules. Such programmers compete directly with cable operators for advertising and subscribers, both of which are important sources of revenue. It is simply inconceivable that for-profit programmers should reap the rewards of their involvement in the communications industry without bearing the minimal costs imposed by leased access. As the Commission stated, programmers who cannot afford leased access rates should not gain access because they would impose a financial burden on operators. See FNPRM at ¶ 66.

C. A FIRST COME, FIRST SERVED APPROACH MAY WORK IF THE COMMISSION GRANTS CABLE OPERATORS THE FLEXIBILITY NEEDED TO NEGOTIATE WITH LEASED ACCESS PROGRAMMERS.

InterMedia and Armstrong offer its limited and qualified support of the first come, first served approach, but only if the

Commission clarifies that the approach applies at the completion of negotiations and not at their start. Such a process also must incorporate the use of programming categories and the ability of cable operators to allocate among the categories, as discussed above.

Thus, a leased access programmer who negotiates in good faith, signs a leased access contract, and provides any necessary deposits and proof of insurance should be considered first over another programmer who has initiated the process by requesting leased access rate information or who has requested capacity but has not yet signed a contract, regardless of whether the two latter programmers contacted the cable operator before the former programmer who is already to begin leasing capacity. The Commission also must clarify that a cable operator may negotiate with different parties at the same time, regardless of who first approached the operator. Leased access negotiations are no different from other business negotiations; each party devotes time and effort to ensure that their interests will be served. Until reaching that conclusion, cable operators should not be required to commit to any leased access programmer. The first-come, first served approach will work only if it is applied at the finish line and not at the starting gate.

InterMedia and Armstrong also encourage the Commission to permit cable operators to give priority to full-time leased access programmers over part-time programmers. Most programming contracts require full-time carriage. If a cable operator must bump an existing programmer, it is less burdensome to replace that programmer with another full-time programmer. In cases where no full-time leased access programmer is requesting access, a cable operator should be permitted to require that a programmer buy at least eight hours of leased access time to help offset the loss of a full-time satellite channel being bumped to accommodate the leased access request.

D. THE COMMISSION SHOULD NOT PERMIT THE RESALE OF LEASED ACCESS TIME.

The concept of reselling leased access time does nothing to promote diversity in programming, but instead ensures only that programmers will profit at the expense of cable operators. The Commission does not mention any constraints it would place upon the rates charged for resale time. Thus, a programmer could lease access at excessively low rates required by the Commission and then turn around and sell that time to the highest bidder.

This scenario already poses a real threat to cable operators. Leased access programmers currently desiring to air infomercials already find it much less expensive to buy leased access time from cable operators than broadcast time from commercial television stations. Armstrong's rates on its major system serving 60,000 plus subscribers is only $100 per hour in prime time, well below rates for television stations in the Pittsburgh market for comparable viewers. InterMedia's leased access rate for Gallatin is $6.42 per hour. If you consider that the Tennessean charges $3,268 for a one-time 1/4 page ad, a Nashville FM station charges up to $137 for a 60-second spot, and a Nashville TV station can charge up to $697 for one 60-second spot, cable operators are being forced to give away their capacity. As examples of other low rates that InterMedia charges for leased access, attached hereto as Exhibit Two are several of InterMedia's rate cards.

This example highlights which outlet the infomercial programmer elects to use. Were time on such inexpensive channels to be made available for resale, the Commission's rules surely would be responsible for creating a new cottage industry almost overnight as parties scrambled to lease access that they can resell at much higher rates.

Such practices would do nothing to enhance program diversity, and they would place cable operators at both a competitive economic and legal disadvantage. Resale rates, while higher than leased access rates, would not reflect the capital costs associated with operating a cable system. Thus, such rates could be lower than what a cable operator might be able to charge for similar time on a non-leased access channel. Cable operators would be placed in the unfair position of having channels on their own systems compete against each other while receiving compensation only for the costs associated with leasing channels.

This unfair situation already exists today. Many leased access programmers lease a channel so they can run back-to-back advertisements. Cable operators are forced to compete with such leased access programmers for advertising revenue. Once again, however, these leased access programmers are able to undercut cable operators' rates because they do not have to recover the same capital and other costs that cable operators must recover. Cable operators, by providing leased access channels at low rates, are effectively subsidizing their own competitors. Congress surely did not create leased access to provide for such a result, and the Commission's rules should not encourage it.

In addition, there can be no guarantee that a resale programmer will apply indecency and obscenity standards to the third-party programmer. Even if the Commission's rules concerning the blocking and prohibition of indecent and obscene programming survive Supreme Court review,[9] cable operators, who will be twice removed from any contact with the third-party programmer, will have no practical means to enforce the rules or any policies they implement concerning such programming. This would place cable operators at significant risk of civil and criminal litigation. Further, subscribers inevitably link the presentation of such programming on a cable system to cable operators themselves. The subscriber will hold the cable operator responsible for showing it and could choose to drop cable service as a result, once again leaving cable operators to absorb even more costs associated with leased access. For these reasons, the Commission should prohibit the resale of leased access time.

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[9] See Alliance for Community Media v. FCC, 56 F.3d 105 (D.C. Cir. 1995) cert. granted sub nom. Denver Area Educational Telecommunications Consortium, Inc. v. FCC, 116 S.Ct. 471 (1995).

E. CABLE OPERATORS SHOULD NOT BE REQUIRED TO DESIGNATE LEASED ACCESS CHANNELS IN ADVANCE, OR TO PLACE A LIST OF CHANNELS IN THEIR PUBLIC FILES.

InterMedia and Armstrong are strongly opposed to the Commission's proposed requirement that cable operators designate leased access channels in advance and publicize that information by making it available for public inspection. Both proposals would place cable operators at an extreme disadvantage with their competitors and would raise possible breach of contract issues with programmers currently carried on those channels.

Having to designate channels in advance and make a list available for public inspection poses an unfair competitive threat to cable operators. A direct broadcast satellite or wireless cable operator could easily review the list and then use it as a marketing tool to lure subscribers away from cable service.[10] Cable operators would be placed at significant risk of losing subscribers in order to accommodate a leased access request that may never materialize.

Such designations also would place cable operators in possible anticipatory breach of contract with those programmers currently being carried on channels designated for leased access. Carriage for a term and channel placement are often negotiated terms included in agreements between cable operators and programmers. Advising a programmer in advance that carriage and or its channel placement may not be honored for the term of its

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[10] InterMedia and Armstrong remind the Commission that such competitors do not have any leased access obligations.

contract could easily turn into a dispute that lands a cable operator in court for doing nothing more than complying with federal regulation.[11]

The Communications Act requires only that cable operators designate channel capacity for leased access, and the Commission's rules provide that parties to a leased access agreement may negotiate for tier and channel placement. See 47 U.S.C. § 532(b) and 47 C.F.R. § 76.971(a)(1). The Commission should continue to rely on these guidelines and let the parties determine which channel to use for leased access.

F. THE COMMISSION SHOULD NOT REQUIRE THAT A CERTIFIED PUBLIC ACCOUNTANT REVIEW LEASED ACCESS COMPLAINTS PRIOR TO THE FILING OF A COMPLAINT WITH THE COMMISSION. IF THE COMMISSION ADOPTS SUCH A REQUIREMENT, LEASED ACCESS PROGRAMMERS SHOULD BE SOLELY RESPONSIBLE FOR THE COSTS ASSOCIATED WITH SUCH A REPORT.

InterMedia and Armstrong believe that requiring a CPA to review leased access rates prior to the filing of a complaint would do nothing more than introduce additional delay in an already burdensome and time-consuming complaint process. Further, the findings of an independent CPA would not relieve the Commission of its obligation under the Communications Act to independently determine the reasonableness of leased access

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[11] While most programming contracts contain force majeure provisions, and InterMedia and Armstrong believe that dropping a programmer to accommodate a leased access user is a force majeure event, it is possible that many parties could wind up in litigation to resolve that issue. In using a force majeure clause to relieve cable operators of their legal obligations, how are they to choose fairly among several programmers as to which service gets dropped? Again, this kind of question could wind up in court, subjecting cable operators to time and expense which the Commission does not take into account.

rates. See 47 U.S.C. § 532(e)(1). Finally, the Communications Act states that leased access rates are presumed reasonable until proven otherwise by clear and convincing evidence. See 47 U.S.C. § 532(f). Implicit in such a presumption is that a variety of factors will be evaluated in determining whether the legal standard has been met. Most of these factors, for example: determining whether higher part-time rates charged for leased access programming shown during prime-time hours are reasonable in light of industry practice, need to be reviewed by the Commission based upon its expertise concerning the communications industry. While an accountant is certainly able to determine whether a calculation has been accurately followed, it cannot reasonably be assumed that every accountant is familiar with the business practices of the cable industry or others involved in communications. Yet it is this very knowledge which is required in order to apply the standard properly. The only way to ensure such knowledge would be for cable operators and programmers to engage in mini-trials before accountants, presenting them with information necessary to apply the standard. As noted above, the Communications Act and the Commission's rules already require that this kind of showing be presented to the Commission when a programmer files a leased access rate complaint. Requiring that the same be presented to an accountant would be burdensome and duplicative.

Nonetheless, should the Commission adopt such a requirement, InterMedia and Armstrong believe that the leased access programmer who requests the review should be solely responsible for paying the costs associated with it. As stated above, leased access rates are presumed reasonable by statute; cable operators should not have to pay to confirm that presumption.

InterMedia and Armstrong also oppose making a CPA's evaluation available for public inspection. Such a requirement would simply intrude too much into the privacy of cable operators' business and financial records and would make this information vulnerable to competitors. If the Commission chooses to force cable operators to include any information at all in public files, such information should be limited to a one-sentence statement concerning the ultimate conclusion reached by the CPA.

G. IF THE COMMISSION ADOPTS A NEW RATE FORMULA, EXISTING LEASED ACCESS CONTRACTS SHOULD NOT HAVE TO BE REVISED TO COMPLY WITH THE NEW METHOD.

Parties that already have come to an agreement concerning leased access rates and conditions should not be required to revise those agreements to take into account a new rate method, particularly when even the Commission admits that its proposed new formula will probably not result in lower rates. InterMedia and Armstrong oppose the Commission's tentative conclusion that existing leased access contracts should be revised if a new rate method is adopted. Any changes to an existing contract should take place only if changes are provided for by the terms of the contract and both parties to the contract agree to amend it.

H. THE COMMISSION SHOULD REAFFIRM PRECEDENT WHICH DOES NOT REQUIRE CABLE OPERATORS TO OPEN UP NEW LEASED ACCESS CHANNELS TO ACCOMMODATE REQUESTS FOR SPECIFIC TIME SLOTS.

InterMedia and Armstrong encourage the Commission to reaffirm the precedent established in TV-24 Sarasota, Inc. v. Comcast Cablevision of W. FL, Inc. 10 FCC Rcd 3506 (Cable Ser. Bur. 1994). Cable operators should not be required to open up another leased access channel to accommodate a specific time-slot request if cable operators can otherwise reasonably accommodate the request in a comparable time slot.

V. CONCLUSION

Increasing diversity in programming is a mandatory goal established by statute. Unfortunately, the Commission's focus on leased access rates as the exclusive means by which to achieve this goal will result, not in an increase in diversity, but rather proposes to establish an incredibly confusing and complex regulatory process that harms cable operators and does nothing to assist programmers. The Commission should focus its efforts on promoting other policies and procedures, such as those suggested by InterMedia and Armstrong, which will facilitate competition and diversity in cable programming.

Respectfully Submitted,

INTERMEDIA PARTNERS AND

ARMSTRONG UTILITIES, INC.,
dba ARMSTRONG CABLE SERVICES

Stephen R. Ross